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property itself, immediately upon adjudication, is under the control and in the custody of the Bankruptcy Court, and is then *in custodia legis*. *Keegan* v. *King*, 96 Fed. 760; *In re Walsh*, 159 Fed. 560; *McNulty* v. *Feingold*, 129 Fed. 1001. Therefore, "title remaining in the bankrupt is inconsistent with control of the estate"; and "title passes conditionally to the court for the benefit of creditors until a trustee is appointed or the estate is closed." *Rand* v. *Sage*, 94 Minn. 344, 102 N. W. 866; *Rand* v. *Iowa Cent. Ry.*, 89 N. Y. Supp. 212. Overruled in *Rand* v. *Iowa Cent. Ry. Co.*, 186 N. Y. 58. The texts, however, bear out the theory that "title to the property itself, whatever it may be, remains in the bankrupt until a trustee is appointed." LOVELAND, Ed. 3, § 149; REMINGTON, § 1120; COLLIER, Ed. 8, 808. And with this theory as a basis it is said that sufficient title remains in the bankrupt for him to commence and to prosecute an action in his own name during this time. *Rand* v. *Iowa Central Ry. Co. supra*. But the fact that even though an action has been so commenced, the bankrupt can maintain it after the appointment of the trustee, is denied in *Remmers* v. *Remmers*, 217 Mo. 541, 117 S. W. 1117, and by dictum in *Pickens* v. *Dent*, 106 Fed. 656. Affirmed 187 U. S. 177 (*Pickens* v. *Roy*). The Bankruptcy Act itself provides for the commencement or continuation of suit by the trustee, § 11, b., c., and § 70a. (6). But if the trustee did not see fit to intervene for any reason under the Act of 1867, the bankrupt might continue the action in his own name. *Thatcher* v. *Rockwell*, 105 U. S. 467 and texts cited. And no provision in the present Act seems to require a different rule. *Hubbard* v. *Gould*, 74 N. H. 25, 64 Atl. 668. The principal case should put an end to these conflicting views, and establish an equitable and legally sound doctrine.

BILLS AND NOTES—AGREEMENT FOR ATTORNEY FEE VOID UNDER NEGOTIABLE INSTRUMENTS ACT.—An agreement, contained in a promissory note, to pay an attorney fee in case of default in payment of the note, was held to be void as contrary to public policy in *Miller* v. *Kyle* (Ohio 1911), 97 N. E. 372. See NOTE AND COMMENT, p. 485 *ante*.

CHAMPERTY AND MAINTENANCE—CONTRACT WITH ATTORNEY FOR CONTINGENT FEE.—Passengers on a vessel were required by the master to discharge the cargo. They assigned their claim for services to an attorney who sued the owner of the vessel, the latter claiming the assignment illegal because champertous. The contract between the plaintiff and the assignors recited that the latter had employed the former and his partner as their attorneys to collect wages due from the defendant, and that they agreed to pay them 25 per cent. of any amount received by them, either by compromise or trial in the Commissioner's Court, and that, if the cause was appealed to the district court, they were to pay 50 per cent. of all amounts recovered. There was no provision in regard to payment of costs, although plaintiff testified that he paid the costs of starting the suit merely as an advancement. *Held*, the contract of assignment was not champertous. *Northwestern Development Co.* v. *Cochran* (1911), 191 Fed. 146.

Act June 6, 1900, C. 786, § 367, 31 Stat. 552, providing for the civil government of Alaska, declares that there shall be in force in that district "so much

of the common law as is applicable and not inconsistent with the constitution of the United States." The court states that the common-law rule against champerty is being relaxed in the United States and a majority of the courts of this country permit greater liberty of contract between attorney and client, drawing a line only in those instances in which the attorney agrees to pay all expense on the basis of a contingent fee. The courts of England have been from an early day, and still are, opposed to contracts of this nature, *Hilton* v. *Woods,* L. R. 4 Eq. 432; *In re Masters,* 1 H. & W. 348; *Strange* v. *Brennan,* 15 Sim. 346; affirmed in 2 Coop. 1, even going so far as to hold that an attorney cannot take a security for future services from his client. *Pitcher* v. *Rigby,* 9 Price, 83; *In re Foster,* 6 Jur. N. S. 687. In the United States, the decisions are in conflict. From the one extreme, holding all contracts between attorney and client contemplating a contingent fee champertous, many, and the majority of the courts, have gone far in the opposite direction. *Elliott* v. *McClelland,* 17 Ala. 206, presents the older and minority view in holding that a contract by which an attorney was to collect money for his client and for his services "to retain on the sums collected 20 per cent., or to be paid $200 as he shall elect" void as champertous. See also *Slade* v. *Rhodes,* 22 N. C. 24; *Ackert* v. *Barker,* 131 Mass. 436; *Scobey* v. *Ross,* 13 Ind. 117; *Butler* v. *Legro,* 62 N. H. 350; *Miles* v. *Collins,* 1 Metc. (Ky.) 308; *Merritt* v. *Lambert,* 10 Paige 352; *Wallis* v. *Loubat,* 2 Denio. 607, but see N. Y. CODE CIV. PRO., § 66, applied in *Benedict* v. *Stuart,* 23 Barb. 420. The other extreme, which lays down the doctrine followed by the principal case in which it is said that such a rule is the majority rule in the United States, is to the effect that an attorney's fee may be contingent upon his success and payable out of the proceeds of litigation, as there is nothing contrary to laws, morals or public policy in such a contract. *Stanton* v. *Embrey,* 93 U. S. 548; *Taylor* v. *Bemiss,* 110 U. S .42; *Aultman* v. *Waddle,* 40 Kan. 195; *Duke* v. *Harper,* 2 Mo. App. 1, affirmed in 66 Mo. 51; *Terney* v. *Wilson,* 45 N. J. L. 282. There is a limit, however, placed on this power of contracting, both by the court in the principal case and by a number of other tribunals, which is that the agreement must not include the payment of costs of litigation by the attorney in case the suit fails. *Kelly* v. *Kelly,* 86 Wis. 170; *Martin* v. *Clarke,* 8 R. I. 389; 5 Am. Rep. 586; *Burnham* v. *Heselton,* 84 Me 578; *Taylor* v. *Hinton,* 66 Ga. 743; *Neal* v .*Franklin County,* 43 Ill. App. 267: But it is allowable for an attorney to loan his client money with which to pay the costs of the suit, as held in the case in hand, and in *Bristol* v. *Dann,* 12 Wend 142. Certain courts have gone so far as to uphold contracts in which such costs were to be paid by the attorney. *Wildey* v. *Crane,* 63 Mich. 720; *Hassell* v. *Van Houten,* 39 N. J. Eq. 105; *Brown* v. *Bigne,* 21 Ore. 260; *Bentinck* v. *Franklin,* 38 Tex. 458.

COMMERCE—CARRIERS—FEDERAL EMPLOYER'S LIABILITY ACT HELD CONSTITUTIONAL.—The Federal Employer's Liability Act (35 STAT. at L. 65, Ch. 149; U. S. COMP. STAT. SUPP. 1909, p. 1171) and the amendment thereto of April 5, 1910 (36 STAT. at L. 291, Ch. 143) abolishing the fellow-servant doctrine and the doctrine of assumption of risk, and modifying the application of the doctrine of contributory negligence by the introduction of the rule of com-